

1 UNITED STATES DISTRICT COURT  
 2 SOUTHERN DISTRICT OF FLORIDA  
 3 WEST PALM BEACH DIVISION  
 4 CASE NO. 16-CV-80655-ROSENBERG

5 **JAMES TRACY,**

6 Plaintiff,

7 vs.

8 **FLORIDA ATLANTIC UNIVERSITY** . West Palm Beach, Florida  
 9 **BOARD OF TRUSTEES,**

10 December 11, 2017

11 Defendant.

12 VOLUME 9

13 JURY TRIAL PROCEEDINGS  
 14 BEFORE THE HONORABLE ROBIN L. ROSENBERG  
 15 UNITED STATES DISTRICT JUDGE

16 APPEARANCES:

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HON. ROBIN L. ROSENBERG

Fort Pierce/West Palm Beach

1           *THE COURT:* I understand you want to do some work with  
2 swapping out exhibits. When you are prepared -- you have told  
3 us you have done that. Would you tell us what it is you are  
4 doing.

5           *MR. MEDGEBOW:* Joel Medgebow for the Plaintiff, good  
6 morning.

7           *THE COURT:* Good morning.

8           *MR. MEDGEBOW:* We swapped out Exhibit 36, I showed  
9 opposing counsel, there's no objection to that.

10           Other than that, all Plaintiff's exhibits as of  
11 Friday, we are fine. As long as everything has not changed  
12 between now and Friday, everything is good.

13           *THE COURT:* We did check on Friday, you are right.

14           Before the exhibits go back to the jurors I will have  
15 you once again get on the record that you have reviewed the  
16 exhibits, they are all there, Plaintiff and Defense, and they  
17 don't go back until everyone has confirmed that they are all  
18 there.

19           I know the Plaintiff was going to prepare all of the  
20 copies of the exhibits. If you would do that, give one to  
21 opposing side, and give one to yourself.

22           *MR. LEO:* You mean the instructions, your Honor.

23           *THE COURT:* What did I say?

24           *MR. LEO:* Exhibits.

25           *THE COURT:* I am confirming there is nothing filed

1 over the weekend; is that correct?

2 MR. FEICHT: That is correct. 225-A, which is the  
3 transcript to be marked for ID only, as well as Defendant's  
4 225, which is the audio itself, and we have a CD player the  
5 jury can use, it is a CD.

6 THE COURT: There is one more for ID?

7 MR. CURLEY: I would like one of the ID pile out here  
8 for demonstrative.

9 THE COURT: Why don't we have a separate file for  
10 ID's.

11 Melanie, there is a CD player. One of the exhibits is  
12 a CD; is that right? Plaintiff has agreed the CD player can go  
13 back?

14 MR. LEO: Yes, your Honor.

15 MR. BLICKENSDEFFER: Your Honor, I handed Mrs. Stipes  
16 an extra copy of the verdict form.

17 THE COURT: All right.

18 So I know that we emailed from chambers the last  
19 version of the jury instructions to both counsel on Friday,  
20 and, again, the Court had allowed for any additional  
21 modifications, particularly on the issue of waiver. Nothing  
22 was filed, and we took that to mean the Defendant is not  
23 pursuing that issue. Is that correct?

24 MR. CURLEY: That is correct.

25 THE COURT: Did everyone review the instructions that

1 were sent and the packet before all of us, and can I get a  
2 confirmation from the Plaintiff that the instructions are as we  
3 discussed and all objections are already a matter of record?

4 *MR. BLICKENSDETFER:* Yes, your Honor.

5 *THE COURT:* From the Defense, are the instructions  
6 consistent with all of the Court's rulings?

7 *MR. CURLEY:* They are to the extent we know. We are  
8 reviewing the copy we just got. I fully expect they are  
9 consistent with what the Court instructed.

10 *THE COURT:* All objections from the Defense, have they  
11 been made as a matter of record?

12 *MR. CURLEY:* Yes, and preserved.

13 *THE COURT:* Let me review it again, I know I reviewed  
14 it on Friday. The Plaintiff, as I recall, the Plaintiff, for  
15 your time, you reserved 60. You want to break it up with 40  
16 and 20, and you want a five minute or ten minute warning?

17 *MR. LEO:* We would like to do 15 and 50 and ten, and a  
18 five minute warning for the first part and two minute warning  
19 for the second.

20 *THE COURT:* And Defense I think reserved 45 to 60,  
21 we'll say 60, and you didn't want any warning.

22 *MR. CURLEY:* Right. The team will throw something at  
23 me when it is getting close.

24 *THE COURT:* All right. Our jurors are all here, and  
25 they ordered their lunch.

1           *THE COURTROOM DEPUTY:* They are working on the  
2 ordering form, but, yes, they are all here.

3           *THE COURT:* All right. They will go from hearing jury  
4 instructions to hearing closing arguments and going back and  
5 beginning deliberations, once the exhibits are put back, and  
6 they will be able to eat and not have to break because they  
7 will have lunch.

8           Anything else that needs to be tended to before we  
9 bring the jury in, from the Plaintiff?

10          *MR. LEO:* No, your Honor.

11          *THE COURT:* From Defense?

12          *MR. CURLEY:* The only thing I ask, after Plaintiff  
13 gives 50 minute argument that the jury get a little break at  
14 that point and I will do mine.

15          *THE COURT:* Okay, that is fine.

16          *MR. CURLEY:* Thank you.

17          *THE COURT:* Check and make sure they are all ready.

18          *MR. CURLEY:* That will help me set up, too, your  
19 Honor.

20          *THE COURT:* No, between the jury instructions and 50  
21 minute opening from the Plaintiff, that would be a fine time to  
22 take a break.

23          *MR. CURLEY:* Thank you.

24          Your Honor, we reviewed the instructions we got, they  
25 are consistent with what the Court came up with.

1           *THE COURT:* Okay, thank you.

2           (Pause).

3           (Thereupon, the jury entered the courtroom.)

4           *THE COURT:* Good morning, everyone, welcome back. You  
5 may be seated.

6           (Thereupon, the jury instructions were read by the  
7 Court.)

8           *THE COURT:* At this time the parties will present  
9 their closing arguments, and because the Plaintiff has the  
10 burden of proof, the Plaintiff will give closing argument and  
11 rebuttal closing argument.

12           The Plaintiff will go first and then Defense will give  
13 its closing argument, and the Plaintiff will be able, if he  
14 chooses, to give a rebuttal closing.

15           So, with that, I will turn it over to the Plaintiff.

16           *MR. BENZION:* Good morning. Members of the jury, when  
17 this case began, we told you, much like the judge just  
18 instructed you, that Dr. Tracy had a First Amendment right to  
19 exercise the freedom of speech, and we told you that we were  
20 going to show you in this trial that his former employer, the  
21 Defendant, Florida Atlantic University, retaliated against him  
22 when he exercised his right to the freedom of speech because  
23 they didn't like what he said. And that is exactly what we  
24 showed you in this trial. Today we recap and I ask you to  
25 follow along.

1           The story begins in the spring of 2012, when Dr. Tracy  
2 started his personal blog, the memoryhole blog, and since its  
3 inception it had a disclaimer on it.

4           Dr. Tracy was evaluated in the spring of 2012. Did  
5 his blogging activities affect his ability to complete his  
6 teaching duties? No, he was excellent in accomplishing his  
7 teaching duties. And even though he was not putting his blog  
8 on a form, did that affect his ability to fulfill his  
9 university responsibilities? No, he was excellent at  
10 fulfilling his university responsibilities.

11           And then in December 2012, we all know what happened,  
12 the Sandy Hook school shooting took place and Dr. Tracy began  
13 blogging about it, and he blogged about Government conspiracies  
14 related to the school shooting, and we know what happened after  
15 that. His blogs garnered national and international media  
16 attention, and Florida Atlantic University began receiving  
17 complaints from students, faculty and donors, and they had to  
18 respond.

19           How did they respond? We asked them to tell us how  
20 they responded under oath, under penalty of perjury. What did  
21 they say? They said they had one meeting. Diane Alperin said  
22 she had a meeting on January 18th. Dean Coltman said they had  
23 a meeting on January 18th.

24           They forgot about four other meetings, meetings during  
25 which they planned their retaliation against Dr. Tracy for his



1 speech.

2 We remember these meetings, members of the jury, we  
3 remember the notes from the meetings taken by Dean Coltman.  
4 The first note from the president of the university, no email  
5 on this, don't create a public record where people can see our  
6 plans to retaliate against Dr. Tracy, and they followed that  
7 directive, they did not create a record. When you look at all  
8 of the records in the jury room you will not see emails from  
9 2013, because they hid the records, except for the notes. They  
10 didn't hide these notes.

11 "Conspiracy theories when hired," sounds like they  
12 were looking at what Dr. Tracy was saying, the content of his  
13 writings, and then they began revising his assignment.

14 What did that have to do with anything? Why change  
15 his assignment at this time? And this is critical, members of  
16 the jury, this right here is a critical admission by the  
17 university, they recognized in 2013, that before they could  
18 take any action against Dr. Tracy, they had an obligation to  
19 meet with him, an obligation under their own disciplinary  
20 procedures, an obligation they met in 2013, but they did not  
21 fulfill that obligation in 2015.

22 And then you heard the talk from the Defendant  
23 university, they were concerned about safety, they were  
24 concerned about Dr. Tracy's safety. You will see in the notes,  
25 they mentioned a threat assessment that they never conducted.

1 You didn't hear the efforts or an outcome of a threat  
2 assessment.

3 They had objectives, and their number one objective,  
4 explore potential misconduct against Dr. Tracy, not conduct due  
5 diligence.

6 Find a way to discipline him, and that is exactly what  
7 they did.

8 Here it is, members of the jury, this is the smoking  
9 gun in this case, this note right here. James Tracy is not  
10 going to stop publishing, we read his stuff, and much like the  
11 judge just told you, it is First Amendment protected speech.  
12 If we want to stop that speech, we've got to "find winning  
13 metaphors."

14 Did Dr. Alperin have an explanation for that note?  
15 Did Dean Coltman have an explanation for the note?

16 This is the only note they couldn't explain or want to  
17 explain because there is only one explanation for this note.  
18 How are we going to retaliate against Dr. Tracy and defeat his  
19 First Amendment rights?

20 And so, they began searching for the winning  
21 metaphors, calling his writing nonacademic, a blog is very  
22 different from work at the university, and that is critical.  
23 That is what Dr. Tracy was saying in 2013, it is what he was  
24 saying in 2015, and what he told you in court today. And this  
25 is what FAU was saying in 2013, but in court throughout the

1 trial they tried to make the blogging sound different, didn't  
2 they? But it wasn't. It was not academic work, but it didn't  
3 meet their procedures and views, didn't go through the vetting,  
4 had the appearance of scholarly work. It wasn't real scholarly  
5 work, and that is why it wasn't reportable.

6 Look at this note, members of the jury, talking points  
7 for the university: We don't police people's private lives.  
8 It sure sounds like they are interested in what people are  
9 doing in their private lives, and this is what they said it  
10 was, just a talking point.

11 Here is where we get to the meeting that Dean Coltman  
12 and Dr. Alperin did disclose, the January 18th meeting that  
13 resulted in the January 28th memo filled with  
14 misrepresentations from Dr. Coltman.

15 She mentions, we talked about your disclaimer on your  
16 blog, and you told me you were going to give me proof about  
17 that disclaimer.

18 She fails to mention that later that day she had a  
19 phone call with Dr. Tracy and 90 minutes later he gave her the  
20 proof of the disclaimer on the blog, but she omitted that from  
21 her letter to make him look bad to the university and file the  
22 unwarranted misrepresentations against him.

23 What are the other things? You have not completed the  
24 required form, you should complete the required form.

25 Ladies and gentlemen, this form is not just required,

1 it is only required if you are engaged in certain activities.  
2 Like the university told us, not all faculty members are  
3 required to submit the forms, because not all faculty members  
4 engage in reportable outside activities.

5 That is their answer under oath. That is not what  
6 they were saying to Dr. Tracy. Dr. Tracy had to correct the  
7 record, and he did, he sent this letter on February 22, 2013.  
8 I have to read this paragraph.

9 Your letter states that our January 18th discussion  
10 should be recognized as distinct from free speech issues. They  
11 didn't want to the talk about free speech. In fact, free  
12 speech has very much to do with this situation not only as it  
13 relates to my teaching and research activities on campus, but  
14 most importantly as it relates to my own activities and  
15 endeavors off campus and unrelated to FAU.

16 If I cannot expect to be able to practice free speech  
17 in my personal life outside the classroom, then when, exactly,  
18 can I anticipate that my First Amendment rights will be  
19 realized? Further, tenure was created to protect faculty from  
20 the political consequences that might otherwise attend speaking  
21 out on matters of public interest.

22 I couldn't have said it better myself, members of the  
23 jury.

24 And Dr. Tracy goes on, you mentioned disclaimer on my  
25 blog, but you failed to mention I gave you the proof that it

1       existed ten days before you wrote your memo.

2               Why did you leave that out?

3               He goes on, and this is a critical moment because Dr.  
4       Tracy got specific. He said to them, he gave them his  
5       interpretation of the outside activities policy, he told them  
6       what he thought, how he thought it applied to his blogging, and  
7       he said it doesn't. He said, pursuant to the CBA, my blogging  
8       is not a reportable outside activity.

9               How did Dean Coltman responded to that claim by Dr.  
10       Tracy? She never corrected it. She didn't respond for nearly  
11       two months, she didn't call Dr. Tracy insubordinate, she didn't  
12       say you are wrong, she didn't say that blogging is a reportable  
13       outside activity, but she disciplined Dr. Tracy, not for  
14       anything having to do with the blogging or reporting of it, she  
15       disciplined him for having an insufficient disclaimer on his  
16       blog.

17               He had a disclaimer, he met the requirements of  
18       Article 5, but it was, according to her, insufficient.

19               What did Dr. Broadfield have to say about that? You  
20       remember Dr. Broadfield, the professor from the illustrious us  
21       University of Miami. What did he say about that discipline  
22       against Dr. Tracy in 2013? He said it was totally without  
23       merit, that Dr. Tracy was not violating the CBA, and he told  
24       you, in his experience representing a number of faculty and  
25       grievances, that the outside activities policy is selectively

1 enforced by FAU.

2 FAU has knowledge of faculty members teaching at other  
3 universities for pay, they don't fill out the forms and they  
4 are not disciplined.

5 The retaliation continues in 2013, and this was  
6 totally unrebutted in this trial, Dr. Tracy's class is canceled  
7 without explanation.

8 And then, from 2006 to 2013, Dr. Tracy was teaching a  
9 schedule that allowed him to take care of his children during  
10 the day so he could teach in the afternoons and evenings, and  
11 what happened in 2013? That schedule changed, and this is  
12 where we see the two sets of rules at Florida Atlantic  
13 University.

14 In April 2013, Professor Morton published an op-ed  
15 about Dr. Tracy disparaging him, identified as an FAU  
16 professor, and he filled the mailboxes in the college with this  
17 letter. What did Dr. Tracy do? He brought it to the attention  
18 of his supervisors and then Dr. Alperin. Please help me, this  
19 is a campaign of personal harassment against me.

20 What did Dr. Alperin do? Nothing. She didn't even  
21 respond to his email. She didn't investigate. She didn't go  
22 to Dr. Morton and say where is your disclaimer? Where is your  
23 form? Where is the discipline?

24 She didn't do that because she agreed with the speech.  
25 She applied a second set of rules to Dr. Tracy. Dr. Tracy, who

1 had never been disciplined for 11 years until he blogged about  
2 Sandy Hook, and to get his record clean again he had to make  
3 concessions, and you heard FAU in this trial tell you they  
4 never restricted Dr. Tracy's speech. No?

5 Well, if he wanted his clean record back, he couldn't  
6 call himself a professor anymore. A title he worked his entire  
7 adult life to achieve he could no longer use because they  
8 didn't like what he said. And then he had to use a disclaimer  
9 prepared by them.

10 Did you see any other evidence of any other faculty  
11 members who had to use a disclaimer prepared by the  
12 administration? You didn't because this is a rule just for Dr.  
13 Tracy.

14 What was FAU's job pursuant to the settlement  
15 agreement, what did they have to do? They had one job, take  
16 that notice of discipline out of Dr. Tracy's file, give him  
17 back his clean record.

18 Did Dr. Alperin do that? She believes she did it.  
19 Remember that testimony? I believe I did it, I don't know, I  
20 believe I did it.

21 And when we asked her to answer that question under  
22 oath, she said she conducted a reasonable search.

23 What did she do, ask yourself? If she did, what did  
24 she find out? I don't know when they took it out of the file.

25 Now, why she doesn't know is because she didn't take

1 it out of the file, she left it in there, retaliated against  
2 Dr. Tracy.

3 Here are more examples of two sets of rules straight  
4 from Dr. Alperin. When she learned as a result of an audit  
5 that a number of deans and faculty members had not reported  
6 outside activities, what did she do?

7 She didn't send him letters and say fill out the form.  
8 What about when in doubt, fill it out, members of the jury?  
9 When in doubt, fill it out. Did all of these faculty and deans  
10 forget that mantra?

11 What about the honor system; did all of these deans  
12 and faculty violate the honor system?

13 Well, Dr. Alperin, she scheduled meetings with them,  
14 she met with them or the deans went and met with her, and they  
15 talked about the specific activities that were not on the  
16 forms, and then they gave these people the opportunity to put  
17 those specific activities on the forms, an opportunity that was  
18 never provided to Dr. Tracy.

19 And Dr. Tracy is blogging in 2013, and how is he  
20 evaluated? Outstanding. Did his blogging ability interfere  
21 with his teaching assignments? No, outstanding. Though he  
22 wasn't putting his blogging on the form, did that affect his  
23 ability to meet his university responsibilities? No, he was  
24 outstanding at meeting his university responsibilities.

25 They talk about Dr. Tracy hiding things from them,



1     hiding in plain sight. Here it is, right on his bio, a regular  
2     contributor to Global Research. They knew about it all this  
3     time and then accused him of hiding it. Dr. Tracy is still  
4     blogging in 2014, he doesn't submit the forms for the blogging,  
5     he is not disciplined for not submitting the forms for the  
6     blogging. They don't request the forms for the blogging, and  
7     when he is evaluated, outstanding across the board.

8             Is the blogging activity interfering with his ability  
9     to be a teacher? No, he is outstanding. Even though he is not  
10    putting the blogging on the form, does that affect his ability  
11    to meet his university responsibilities? No, he is outstanding  
12    at meeting his university responsibilities.

13            And even when we get to 2015, Dr. Tracy is still  
14    blogging and blogging about Sandy Hook, and Dr. Alperin and Dr.  
15    Coltman, they receive complaints again about blogging about  
16    Sandy Hook, and Dr. Tracy goes on paternity leave.

17            Dr. Tracy is evaluated in 2015, and once again, doing  
18    a great job, he is above satisfactory and meeting his teaching  
19    responsibilities, and even though he is not reporting the blog  
20    on the forms, he is doing an excellent job at meeting his  
21    university responsibilities.

22            And then we get to October 2015. Dr. Tracy had  
23    already submitted his annual assignment for the year, but they  
24    made some changes to it.

25            Could Dr. Alperin explain those changes to you? No.

1 Could Dean Coltman? No. Dr. Tracy could. They added this  
2 check box, this new check box that required him to affirm his  
3 understanding and compliance with a policy that he and many  
4 others were confused with, and so he raised that concern.

5 He raised it to his immediate supervisor first, I have  
6 a serious concern I believe other faculty might share with this  
7 check box.

8 This unresolved concern closely parallels FAU's uneven  
9 policy that could potentially hinder faculty members' academic  
10 endeavors and free speech, there needs to be additional  
11 clarification.

12 Did he get that clarification? No, but behind the  
13 scenes, Dr. Tracy's supervisor is agreeing with him, telling  
14 the higher ups this check box looks new. He needs an opinion  
15 from legal as to what is going on here. Dr. Tracy should know,  
16 but his supervisor needs an opinion from legal.

17 Does he tell Dr. Tracy that he thinks the check box is  
18 new, too? No. He sends the confusing email back to Dr. Tracy,  
19 these regulations are not new. He wasn't talking about the  
20 regulations, he is talking about the box, and he says you are  
21 adding layers of things here. He doesn't tell him that he  
22 thought it was new, too, he belittles him.

23 He sees how this is going and he says I will check the  
24 box, I will feel more comfortable doing it if you tell me about  
25 your position on my blogging. He gets specific again, he says

1 please, just tell me if you think my blogging activity is a  
2 reportable activity, please, just tell me.

3 Do they tell him? No, they don't tell him. This is  
4 what they tell him, nothing. So Dr. Tracy sends another  
5 request for clarification.

6 Meanwhile, behind the scenes his supervisor, David  
7 Williams, is emailing the higher ups again and he says Jim is  
8 objecting to the drop-down box, I don't suppose we can do  
9 anything with that.

10 What were they trying to do? Find that winning  
11 metaphor, that is what they were trying to do.

12 On November 2nd, they write back to Dr. Tracy, if you  
13 have outside income you have to fill out these forms.

14 Talk about making matters worse, more confusing  
15 directives. This is not the policy, as you learned. And then  
16 he says, I sent it to the deans, I don't know if they are going  
17 to accept the way you turned in the assignment.

18 November 2nd, he doesn't know that yet, and that is  
19 what he tells Dr. Tracy.

20 A week later, November 9th, he tells Dr. Tracy, I have  
21 not heard back from the deans yet, still waiting to find out if  
22 that assignment is going to be accepted in the way Dr. Tracy  
23 turned it in.

24 In the meanwhile, Dr. Tracy is communicating with his  
25 union about the check box. What does the rookie Zoeller say

1 about the check box? Looks new to me, too, I don't remember  
2 signing this either.

3 Members of the jury, remember, at this point Dr. Tracy  
4 has not refused to do anything. Over a matter of days, he just  
5 asked for some clarification from his supervisors, and they  
6 haven't gotten back to him yet. And then what happened?  
7 Discipline.

8 No meeting, no phone call, no response to his request  
9 for clarification, just discipline, and they called him  
10 insubordinate in this letter.

11 He hadn't refused to do anything yet, and yet they are  
12 already calling him insubordinate, and they abandon their own  
13 disciplinary procedures by not holding a meeting with him and  
14 just disciplining him.

15 Those are the highlights, repeatedly requests for  
16 clarification, repeatedly failed to verify that clarification,  
17 and they refused to meet with him and called him insubordinate.

18 So, Dr. Tracy exercised his right to respond and  
19 explain himself, and that is what he did in this letter. He  
20 said, I feel like you are disciplining me just for asking for  
21 clarification. On November 22nd he sent this letter, and he  
22 asked for a response. Timing is important. He says, can you  
23 please respond to me by December 1st.

24 Along with that November 22nd letter, Dr. Tracy  
25 checked the box. He complied because he thought his union was

1 going to grieve for him. Remember that mantra, comply, then  
2 grieve, comply and grieve. He checks the box and turns to the  
3 union and says, are you going to grieve for me? And they said  
4 no, we talked without you, we decided your situation is not  
5 grievable.

6 Comply and grieve, more like comply and sorry, we are  
7 not going to grieve.

8 And here we go. December 1st comes around. Any  
9 responses to Professor Tracy's request for clarification?  
10 There they are on the screen, that is all of them.

11 We know what was happening on the scene on November  
12 first, right? Dean Coltman was joking around about Dr. Tracy's  
13 request for clarification. Did you see JT's response to the  
14 notice of discipline?

15 He wanted a response by December 1st, oh well. Is  
16 that the highest standard of ethics at FAU? Is this how a  
17 professor should be treated in this kind of situation?

18 You know it is not, members of the jury.

19 And this is when it all went down right here,  
20 December 10th. Remember, at this point, FAU had not yet  
21 responded to Dr. Tracy.

22 But when this article was published, it caused an  
23 uproar. Dr. Tracy is being accused of harassing people. It  
24 wasn't true, but still caused an uproar, and this article was  
25 published on December 10th, at 3:15 p.m.

1           What happened next? Less than two hours later, they  
2           are drafting Dr. Tracy's termination letter.

3           They made the decision on that day, December 10th,  
4           before ever responding to the request for clarification, before  
5           ever meeting with him or even talking with him. They decided  
6           right then and there he is fired, now let's make it look  
7           legitimate.

8           Here it is, the termination letter, drafted before  
9           they ever even threaten him with termination. Before they ever  
10          even told him that he could potentially face termination, they  
11          are terminating him.

12          And then they are circulating that disparaging article  
13          about him among themselves, and you see how they felt about it,  
14          huh, they detested what he said, what he was accused of saying,  
15          which wasn't true.

16          Here we are, December 11th, Dean Coltman still had not  
17          responded to Dr. Tracy, but she is looking for more evidence  
18          against him. She is following up on these complaints,  
19          searching for evidence. Please, give me another reason why I  
20          can say he should be fired.

21          And finally, she responds to Dr. Tracy. Does she give  
22          him clarification? No. She just says, you've got less than a  
23          business day to give me the forms.

24          Does she tell him what she wants on the forms? No.  
25          Does she call a meet withing him? No. She threatens with

1 termination and says give me the forms and guess what I want on  
2 them.

3 Before Dr. Tracy responds, she continues the  
4 investigation on him, still looking for the winning metaphors,  
5 still looking for illegitimate reasons for terminating him.  
6 Here is all of the evidence she found of misconduct, there it  
7 is, none.

8 And so Dr. Tracy got her email, and he responded. He  
9 sent in those forms like she requested and he tried to fill  
10 them out even though he didn't understand what they were asking  
11 for because they never told him. So, he took his best shot and  
12 he put what he thought maybe should be on the forms. And less  
13 than a day later he was fired.

14 Doesn't sound like they considered much of what he  
15 gave them, does it? That is because their minds were already  
16 made up, those forms didn't matter.

17 Members of the jury, in this termination letter, this  
18 is the first time that they tell Dr. Tracy that his blogging  
19 was reportable activity.

20 Does that sound fair to you? The first time they ever  
21 let him know that they expected his blog to be on a form was in  
22 the letter terminating him for not putting it on the form.  
23 That is a violation of their own disciplinary procedures.

24 So, what does Dr. Tracy do next?

25 Remember, he complied, he looked for the grievance,

1 and then they wouldn't grieve. We got a lawyer for you, Dr.  
2 Tracy, and we'll respond.

3 This is the response, this is what the union did for  
4 him, some union. You heard Robert, the rookie, Zoeller in  
5 here, he couldn't even admit that the advice he gave Dr. Tracy  
6 was bad advice. He was just a rookie at the time, quite a  
7 mistake he made, right? Cost somebody their job.

8 And they are going to come up here in a moment and Mr.  
9 Curley is going to tell you Dr. Tracy fired himself because he  
10 didn't respond to their termination letter. He was waiting for  
11 his lawyer to do it, and when he didn't do it, he filed a First  
12 Amendment lawsuit, and that is why we are here.

13 Let's look at the highlights from December. Professor  
14 Tracy was never provided outside activity policy clarification.  
15 Dean Coltman, did she give Dr. Tracy a chance to give his side  
16 of the story? No. And she found no evidence of misconduct.  
17 And then her and Vice Provost Alperin ignored their obligation  
18 to meet with Dr. Tracy before terminating his tenured  
19 professorship.

20 We know why they did that, members of the jury, we  
21 know why they departed from their own disciplinary procedures.  
22 That is because they didn't like his speech, and they wanted  
23 him gone, and that is what this statement says right here, the  
24 complete statement from the voice of the College of Arts and  
25 Letters, Dean Heather Coltman. With every blog, post, tweet



1 and proclamation of false flags Dr. Tracy's termination holds  
2 him accountable for his despicable behavior. That is what they  
3 thought of his speech, it is despicable.

4 Then we see more examples of the two sets of rules.  
5 You heard a lot about books, and the books Dr. Tracy didn't  
6 even write. Books aren't even reportable, members of the jury.

7 Here it is, straight from Diane Alperin to a dean at  
8 FAU. One faculty member is writing a book. He doesn't know,  
9 the dean doesn't know, should this book be reported? He has to  
10 ask the Vice Provost. What does she say? No, this would be  
11 part of another activity, it is not reportable.

12 How about this question, a general question is what  
13 activities need to be reported and what do not? This dean  
14 doesn't seem to have much of an understanding what should be  
15 reported and what should not, does he?

16 Dr. Alperin says, as you know, we have been working on  
17 a new form for quite some time, and we are going to be sending  
18 out some additional instructions soon.

19 Dr. Tracy never got those instructions, everybody else  
20 did. Why did they need those additional instructions?

21 Look at this form, members of the jury, outside  
22 employment/professional activity form. Where is the space for  
23 non-professional research or non-professional consulting?  
24 Where is that here? Where is that in one of the boxes for  
25 uncompensated activity? Where is the description? They only

1 give you a place to describe the employment activities. What  
2 about the unemployable activities? Quite a form, members of  
3 the jury.

4 And then we get the additional explanations from the  
5 Provost. Why do we need the additional explanations? Just  
6 look, look at all of the policies, regulations, forms, and  
7 faculty are supposed to understand without any training,  
8 without any training from FAU, without any training from their  
9 union, this vague and confusing policy. They are supposed to  
10 be able to read their administrators' minds and understand what  
11 they want.

12 Remember, remember, this is open to interpretation.  
13 That is what Dr. Alperin said. Any compensated or  
14 uncompensated activity.

15 Well, we know the compensation you earn from gambling,  
16 that is not reportable. She said gambling is not related to  
17 any teachers' discipline, and I asked what about the engineer  
18 who had to report his play that wasn't related to his  
19 discipline? Oh, he has to report that because that could be a  
20 conflict of time commitment.

21 Isn't gambling a time commitment? When I asked her if  
22 someone disagrees with your interpretation, does that mean they  
23 are insubordinate? Apparently, apparently it does.

24 Are these terms defined, members of the jury,  
25 compensated, uncompensated activity, professional practice,

1 consulting, teaching or research? None of these terms are  
2 defined, not in the CBA and not anywhere. Everyone is left to  
3 guess how to comply with this policy.

4 And then we come back to the two sets of rules. You  
5 heard from another disinterested party, Professor Doug  
6 McGetchin, the current grievance chair for the union, who  
7 didn't even know what Article 5 was.

8 He posts about history on his Twitter, he is a  
9 professor of history, related to his discipline, he marketed  
10 his book on there, he had no disclaimer. He referred to  
11 himself as an FAU professor, and he was never disciplined for  
12 doing that, never told to add a disclaimer.

13 And then you remember the testimony of Professor Robe,  
14 a former president of the union just like Dr. Tracy. Did he  
15 understand the policy? No. He said it was absolutely  
16 confusing, unclear.

17 Remember, he was at the university for 13 years, he  
18 posted articles relating to his discipline online with  
19 regularity. Did he ever in his 13 years fill out a form  
20 reporting those activities? No. He never filled out a form.

21 That is because FAU just leaves everyone to guess.  
22 They have no policies for blogging or social media activities,  
23 and furthermore, they know, they know that faculty are not  
24 simply required to report every use of university resources.

25 Look at this form, this form to report resources is

1     only used in conjunction with the report of outside employment  
2     form. If you are not using the outside employment form because  
3     your activities are not reportable, then don't use this form.

4             You remember Dr. Steven Kajiura, he had the Hawaiian  
5     shirt when he was in here. Remember him? Another example of a  
6     second set of rules. Remember the things that Dr. Kajiura was  
7     accused of not doing or doing? He was accused of killing  
8     animals, he was accused of endangering the lives of students.  
9     He was accused of the unauthorized use of university equipment,  
10    and in addition to all that, he wasn't filling out the forms.

11            He was filling them out inconsistently and  
12    incompletely in 2010, and you know what they did? They set a  
13    meet withing him.

14            Look at the notes of discipline, they told him the  
15    specific things that he was not putting on the forms, and then  
16    they disciplined him with a suspension of five days without  
17    pay, and then he grieved it. To whom? Diane Alperin, and she  
18    denied his grievance, and then it was overturned by an  
19    arbitrator.

20            Now let's talk about Professor Copeland. This is an  
21    example FAU touted as someone like Dr. Tracy, wasn't engaged in  
22    speaking activities, wasn't saying controversial things. She  
23    was engaged in a clear conflict of interest, she was teaching  
24    at another school for pay.

25            What did they do to Professor Copeland? They

1 scheduled a meeting with her, again, a meeting, and they told  
2 her specifically what she wasn't putting on the forms. And  
3 then she resigned.

4 She never intended to fill out forms or follow their  
5 directives, she just left, and they say this is just like Dr.  
6 Tracy, who sent repeated requests for clarification. What a  
7 farce.

8 You heard Mr. Curley repeatedly tout these standards  
9 of ethics at FAU. Members of the jury, they abandoned their  
10 own disciplinary procedures when it came to disciplining Dr.  
11 Tracy.

12 They had to call somebody over from HR to make sure  
13 that the discipline that they were handing out was appropriate,  
14 to make sure that it was consistent with past practice and that  
15 the severity was appropriate. And they didn't call that person  
16 from HR. Why? Because they knew they would be told that they  
17 were behaving inappropriately, and the discipline and the  
18 termination that they chose was too severe, did not follow the  
19 rules.

20 Let's look at their other standards for discipline.

21 Appropriateness of discipline, you need to look at the  
22 seriousness of the offense and the employee's past record of  
23 work performance.

24 Dr. Alperin told you she never looked at this  
25 outstanding professor's evaluations, she never looked at them.

1 She departed from her own procedures, she looked for something,  
2 though. She checked her students' evaluations to see if she  
3 could drum up any complaints from them.

4 Did she find any? No. She said he made them think.

5 What about the types of discipline that they could  
6 have handed out to Dr. Tracy? They could have counseled him,  
7 give him an oral reprimand or written reprimand or suspend him  
8 with or without pay. They went straight to the harshest  
9 punishment, termination, because they didn't like his speech.  
10 Why didn't they like his speech? Why did she reserve the  
11 harshest punishment for Dr. Tracy? Because they thought he was  
12 a nut job.

13 Here is Heather Coltman the day he is terminated,  
14 gloating, joking, writing the supervisor of his wife, how is  
15 your employee doing today? Mine is packing up his office. In  
16 fact, she was celebrating, celebrating with a cocktail. It is  
17 cocktail time for Dean Coltman because she finally found that  
18 winning metaphor.

19 She testified she didn't want to fire Dr. Tracy, no,  
20 but she was celebrating when she did because she was motivated,  
21 motivated to get rid of him, motivated by his speech. And just  
22 as you were just instructed, members of the jury, to find that  
23 Dr. Tracy's speech was the motivating factor in FAU's decision,  
24 Dr. Tracy had to prove that the speech was the motivating  
25 factor, not that it was the only reason for FAU, but it was

1 enough that Dr. Tracy proved to you that his speech had  
2 influenced FAU's decision.

3 And we showed that to you, members of the jury, we  
4 showed you that they were influenced by his speech, and that is  
5 why when you read question number one on this verdict form,  
6 that Professor Tracy's blog speech was a motivating factor in  
7 FAU's decision to discharge him from his employment, you will  
8 say yes, it was.

9 And then you move on to the next question where you  
10 are asked, would FAU have discharged Professor Tracy from  
11 employment even if FAU had not taken his blog speech into  
12 account? And the answer to that question is no. They reserved  
13 the most severe and harshest form of punishment for Dr. Tracy  
14 because they were motivated by his speech, and because he spoke  
15 on controversial matters.

16 Members of the jury, I am asking you to answer that  
17 first question yes, and that second question no, because these  
18 are the only answers that are consistent with the facts in this  
19 case. They are the only answers that are consistent with the  
20 law, and these are the only answers that will allow you to  
21 serve justice in this case.

22 Thank you for your time and attention.

23 *THE COURT:* Okay. Ladies and gentlemen, we are going  
24 to take a brief recess before we go into the Defense closing  
25 argument, so it will be very short, just to make yourself

1 comfortable, stretch, and will be about five or so minutes.

2 And just please remember nothing has changed about the  
3 rules, you are not to discuss the case, do any research, view  
4 any media. There will be time soon enough when all of the  
5 exhibits are back and all the arguments are done when you will  
6 begin your deliberation. Nothing about that has changed.

7 We will be in brief recess and we will call you back.

8 *(Thereupon, a short recess was taken.)*

9 THE COURT: Okay, remain standing for the jurors.

10 I would like to ask after I read the instructions -- I  
11 will ask the question again of the Plaintiff, did the Court  
12 read the instructions as discussed in the conference?

13 MR. BLICKENSDECKER: Yes.

14 THE COURT: And from the Defense, did the Court read  
15 the instructions as discussed?

16 MR. CURLEY: You made one error, you said part instead  
17 of element.

18 THE COURT: Are you requesting a correction?

19 MR. CURLEY: No.

20 THE COURT: And all instructions are a matter of  
21 record.

22 MR. CURLEY: Yes.

23 THE COURT: All right.

24 *(Thereupon, the jury returned to the courtroom.)*

25 THE COURT: Okay, welcome back, everyone. You may be



1       seated.

2               We'll turn it over to Defense now for closing  
3       argument.

4               MR. CURLEY: Thank you, your Honor. May it please the  
5       Court, counsel.

6               Ladies and gentlemen of the jury, before I get  
7       started, I just want to thank you for the attention you have  
8       shown. When we started off you were members of what we call a  
9       venire. I asked if you thought you would be able to make it  
10      through and listen to both sides of the case. That is obvious  
11      to us that you did that, and you listened carefully and  
12      everybody has had a chance to say their piece.

13              Thank you very much.

14              So, with that, I will get started.

15              When I started with you all, the first thing I  
16      mentioned -- this may seem redundant, I will talk about the  
17      things we talked about in the beginning of trial. The first  
18      thing we talked about, one of the jurors wanted to know the  
19      reasons why Professor Tracy lost his job, and I told you that  
20      we would deliver those for you. It was our job to make sure  
21      you got the evidence so you know what FAU was thinking when it  
22      made its decision here. We have given those to you.

23              I told you that the problem that cuts through the  
24      entire case, in our view that is, is that Professor Tracy  
25      doesn't follow the rules.

1           There are rules that everybody else follows, and  
2 during the course of this case I said you would hear about, and  
3 now you have, things like comply and grieve, if in doubt, fill  
4 it out, all kinds of things that everybody else but Professor  
5 Tracy did and follows. Everybody else checked the box,  
6 everybody else filled out the form when they were asked to do  
7 that, even the folks that you just heard about.

8           A friend from the northeast, Professor Robe, even he  
9 said if they asked me to fill out the form, I would fill it  
10 out. It seems like common sense. Professor Robe also said I  
11 saw Professor Tracy in his office doing his podcasts, and I  
12 said to him, you shouldn't be doing that, you shouldn't be  
13 using the university's resources.

14           He did it anyway, and he kept on doing it because he  
15 doesn't play by the rules, and if you can't play by the rules  
16 at FAU or other large institutions, it is difficult. It didn't  
17 work for his agenda of self promotion and the blog. I think  
18 during the course of the trial hopefully you saw where the  
19 priorities really lie.

20           So, let's talk about the things that I promised to  
21 prove to you. I showed you the same board when we started.

22           When we started, I couldn't show you the documents,  
23 the evidence. By the way, when you see the documents, the  
24 evidence I am going to show you, it is the whole thing, it is  
25 not a cut up piece that I like, like some of the things you

1 just saw. I am sure a lot of you noticed when you were shown  
2 the termination letter, you will see when you go back in the  
3 jury room what it says is "proposed letter of termination."  
4 What it says is that you have time to respond to this. What it  
5 says is that you can grieve this if you don't like it. So,  
6 when I show you something, I am going to show you the whole  
7 document, okay?

8 They are over here, you will have those in the jury  
9 room. Take your time with them, take a look at any of them you  
10 want.

11 Let's go through the list real quick.

12 He solicited money for the independent research on the  
13 memoryhole blog website without disclosure. That is 21. Put  
14 that up.

15 You can all see that now. I couldn't show you that  
16 before, but this is his website where he is asking for money  
17 that he describes in his words, not mine, memoryhole research  
18 fund.

19 So, if you give money to this site, you are looking at  
20 it, what do you think those folks thought they were giving  
21 money for? Research, funded research.

22 Okay, let's go to the next one.

23 He received more than a thousand dollars in outside  
24 compensation through money given and solicited by him for his  
25 blog, he didn't disclose that. He was engaged in a compensated

1 activity.

2 216-I, these are the PayPal receipts, they are over  
3 there, there is a pile of them. You can look through them and  
4 you will see the purpose, memoryhole independent research fund.

5 Remember, Professor Tracy had all kinds of  
6 descriptions for that, we will talk about that.

7 Exhibit 22, these are Professor Tracy's own words,  
8 Exhibit 22. He writes this, as you can see the date, on  
9 October 20, 2015.

10 His words, not mine: Since money would be passing  
11 hands, this surely would make filing such a form appropriate.  
12 His words, not mine. Okay?

13 So, at this point in time, it's October 20th, we are  
14 in the middle of several things, not just their request for  
15 information, not just his refusal to check a silly box. You  
16 have seen the box, check the box. Everybody else does, he  
17 doesn't.

18 The audit from the records you have, that started in  
19 2014. Remember Jason Ball, the man who knows about computers  
20 from FAU, the guy that told us about the minus 500 which we  
21 will talk about in a minute? Jason Ball verified he had done  
22 this before, he checked it before.

23 So, why wouldn't he check it this time? You start  
24 thinking, don't you, everybody else does, too, why aren't you  
25 checking the box that everybody else checks? Questions get

1 asked, it is pretty obvious.

2 Okay, let's go on to the next one.

3 He performed enough research and analysis to draft and  
4 publish one to two articles per week on the memoryhole blog web  
5 site for an audience of about 10,000 followers, no disclosure.

6 What you are looking at on the screen, that is the  
7 titles, that is not the blogs. Those are the titles for each  
8 of the blogs he was putting out during this period of time.

9 Here is the point -- there are two, really. Number  
10 one, he is doing this, nobody is stopping him. In 2013, 14,  
11 15, it is happening. This is all the speech that these guys  
12 are talking about, nobody stopping him, nobody ever stopped  
13 him.

14 What they wanted to do is find out about the  
15 disclaimer and, sure, you are not telling anybody it is FAU,  
16 you can blog to your heart's content personally. You heard  
17 Alperin say that, Dean Coltman said that. Go for it, leave us  
18 out of it, there are issues about that. We will talk about the  
19 notes for a minute.

20 Safety concerns, sure, they have obligations to  
21 Professor Tracy, no question, but they also have obligations to  
22 their students, to the faculty, to the university itself, to  
23 the State of Florida which funds the university. It is not  
24 just about Professor Tracy, folks. It might seem like it  
25 sometimes, but it is not.

1           Okay, next one, he performed enough research and  
2 analysis to draft and publish 13 articles in a single month  
3 without disclosure. That is 224. Again, here are the articles  
4 for the single month.

5           And you have 217-M. Again, Professor Tracy -- this is  
6 a series of emails between Professor Tracy and his attorney, we  
7 will talk about a few of those. This is his lawyer, not us,  
8 his lawyer, where he is talking about how it helps with his  
9 teaching and research. Research, teaching.

10          Okay. So let's move on to the next one.

11          He engaged in research and writing articles as part of  
12 his outside activities using university resources without  
13 disclosures, 217. And you will have all these, I encourage you  
14 to spend as much time as you want with them. You will have  
15 them, read them, it is all there for you.

16          Then let's look at -- this is what he is saying. Look  
17 at 114-A, if we can.

18          114-A, this is one I would encourage you to spend a  
19 little time on, folks. 114-A is the one he writes off the FAU  
20 grid, this is the one he writes to his friend in California  
21 because he wants to talk to somebody in between the time that  
22 Dean Coltman, who you met, met with him, this is after his  
23 meeting with Dean Coltman, and before he responds to the  
24 university, and this is what he is saying on his non FAU email  
25 to somebody outside the university.

1           You will find this entirely different than what he was  
2     telling the university and a lot of things we heard about in  
3     the courtroom during the course of this week. Let's look at  
4     it.

5           Global Research, I didn't -- "it didn't really occur  
6     to me because I am not being compensated and it probably  
7     amounts to no more than three, four hours per week. Yet they  
8     may inform some of my research and teaching. So I am uncertain  
9     whether I should fill out such a form" -- we know what form  
10    that is -- "for the activity ex post facto" -- that means after  
11    the fact, and that means he doesn't want to tell them about it  
12    because he has already done it -- "especially since it might  
13    give them reason to take disciplinary action as my remarks may  
14    no longer be regarded solely my own free expression."

15           That means it falls within the outside activities.

16           Then he says "our union guy suggested I do so."

17           This is in 2013. We are not even to Mr. Moats and all  
18    that stuff. I am going to talk about that for sure.

19           This is the union guy saying, hey, Professor Tracy,  
20    you should disclose this. I am here to look for other  
21    opinions. I am going to move along until I find somebody that  
22    says what I want to hear.

23           Okay, so that is that, and then he responds, and we'll  
24    look at his response letter, but put it into context.

25           When you are in the jury room put together the

1 January 18th memo, then stick this 114 behind it, and look at  
2 what he wrote to the university if you want to see the level of  
3 honesty and integrity here.

4 Okay. He used university resources to produce and  
5 record his Real Politik show. He only admitted that ex post  
6 facto, after the fact, on 12/15 in a paper that he filed.

7 If we look at 16, here is the letter they were just  
8 talking about. This is the one that comes after 114. Okay.

9 There is a lot of stuff in here, but what I want to  
10 highlight here, he is telling them, even though you have seen  
11 114, and he knows differently, "most importantly, what relates  
12 to my activities and endeavors, they are off campus and  
13 unrelated to FAU." This is what he is telling the university.

14 24. This is the form he filed telling them that he  
15 was using university resources, and I remind you of the friend  
16 from the northeast who walked in and saw him using the office  
17 for a podcast and he told him he shouldn't do that, but he kept  
18 on doing that anyway. That is page one.

19 Page two. He contributed 120 pages of material to a  
20 published book called Nobody Died at Sandy Hook, it was a FEMA  
21 drill to promote gun control. It was on sale on amazon.com.  
22 He failed to disclose his contribution to the book or the fact  
23 that he received compensation for his contribution to it.

24 3-A, please. That is the cover of the book. This is  
25 what it says about Professor Tracy in the book. You will have



1 it, you can look at it. I encourage you to look for a  
2 disclaimer anywhere. You won't find it. You will find this,  
3 and this is what Professor Tracy never removed.

4 I asked him, what efforts did you take to try and get  
5 this removed from the book? Nothing.

6 Let's look at Exhibit 165. This is what he wrote or  
7 he said Professor Fetzer put it together for him and then he  
8 edited it and sent it to the *Sun Sentinel*. Check out the date  
9 on that, December 13, 2015. We'll come back to that. Remember  
10 his job is in trouble, this is after he got the December 11th  
11 letter from Dean Coltman, and he was on paternity leave, wasn't  
12 checking his emails, right? It looks like he has email here.  
13 It looks like he has different priorities.

14 He had time to put this together and respond to the  
15 *Sun Sentinel*, but he didn't have time to respond to the dean.

16 So, what does this say? Here he is writing to the  
17 newspaper saying extensive research, back to research again,  
18 several academics, including Fetzer and myself, and talking  
19 about the book.

20 "The book, which presents hundreds of proofs that the  
21 shootings at Newtown, Connecticut's Sandy Hook Elementary  
22 School on 14 December 2012 was a staged elaborate hoax, enjoyed  
23 brisk sales of around 500 copies since Amazon initially offered  
24 it."

25 Remember we quibbled with Professor Tracy about

1 marketing? I suggested he marketed the book.

2 Here is the rub, it's not up to me any more, not up to  
3 him. This case is going to you all, and you will decide it,  
4 and it is in your good hands, so the quibbling, all that stuff,  
5 it is over. You all get to put your common sense on this and  
6 decide who has delivered the truthful story to you or not. It  
7 is up to you all, and we are glad that it is.

8 Okay. Let's see what is next.

9 He used the FAU name and his professional position  
10 as a professor for what he later claimed are outside personal  
11 activities. He did so repeatedly after committing that he  
12 wouldn't in a 2013 agreement. That is Exhibit 19.

13 This is the one he signed. They made much of this.  
14 That is Professor Tracy's signature, that is his union  
15 representative, and this is called negotiated settlement of  
16 grievance. He would have you think somebody was holding his  
17 arm behind his back and made him sign it. This is the deal he  
18 struck, that is what he agreed to do. He did not honor it, and  
19 you have seen the evidence of that.

20 Let's look at -- we looked at 32 -- Exhibit 25. This  
21 is where they talk to him about the notice. This is not the  
22 point I wanted to highlight here, but that is okay. Let's go  
23 to page 130, and see what Professor Tracy had to say about this  
24 when I talked to him about it at trial.

25 This is trial testimony, the Court Reporter types it

1 up. This, you may recall, is when I talked to Professor Tracy  
2 on cross-examination.

3 I said: So, for the six weeks you were there were  
4 there any efforts taken in compliance with the collective  
5 bargaining agreement to make sure everybody understands this is  
6 not associated with FAU?

7 I am talking about the collective bargaining agreement  
8 here, not the agreement itself. You can look at either one of  
9 them. This is Professor Tracy's answer. And I'll tell you why  
10 I highlighted November 10th in a second.

11 At the time, once again, I was dealing with other  
12 matters, the Notice of Discipline and so forth on  
13 November 10th, and I continued to attempt to get clarification  
14 of the policy that was being used to eventually terminate me.

15 I said: You were too busy to deal with issues like  
16 this; is that what you are saying?

17 I was too busy attempting to defend myself.

18 What was Professor Tracy really doing on  
19 November 10th? All right. That was the date of the podcast,  
20 he was doing his podcast, that is what he was busy with.

21 If you would play a segment of that.

22 (Thereupon, the tape was played.)

23 *MR. CURLEY:* There is more, there is a CD player over  
24 there, you can listen to it as much as you want. It is only  
25 Professor Tracy's comments. The comments from the people he

1 was interviewing were edited out because the Court ruled that  
2 as hearsay.

3 You have a CD player and you can listen to the podcast  
4 on November 10th, the same day he was too busy to deal with the  
5 issues.

6 Moats, number one, he is the unit director for the  
7 unit, Professor Tracy's unit.

8 (Thereupon, the depo video was played.)

9 All right. Let's check the next one.

10 He was the only FAU professor to refuse to click okay  
11 on the pop-up box. The request he acknowledged is his  
12 obligation when he was submitting his annual assignment in  
13 2015. The only guy.

14 You want to know what changed? This is what changed,  
15 this pop-up box.

16 When Professor Tracy, as silly as he may sound when he  
17 said I am not signing it and checking this thing, then put up  
18 all kinds of fights about checking this box, that is when  
19 people started going, what is going on, why isn't this guy  
20 signing this box? Why won't he agree to do this and we will  
21 move on?

22 You did hear about the honor system, and I am going to  
23 talk about that.

24 They have 3300 faculty. Folks, they trust their  
25 faculty, they are on an honor system, and unless something

1 comes to their attention, they trust the faculty to report as  
2 they should report.

3 You heard the people they called, they got up on the  
4 stand and talked about reporting, some of them said, as counsel  
5 said, I didn't report that.

6 Here is the problem. No one asked him to, no one knew  
7 about it. If they should report, I don't know, depends on  
8 whether he qualifies or not. If they are asked to report it,  
9 then they have to report it.

10 I think they mentioned Professor Kajiura. He was a  
11 shark guy, he did research on sharks. He filled it out when he  
12 was told to do it, filled it out correctly, and he grieved. He  
13 explored his union rights, he didn't like the way the  
14 university was handling him, and he grieved, and it came out  
15 okay for him, and on he goes. He works at the university and  
16 does his job and fills the form and checks the box.

17 So, this is what changed, this box that he refused to  
18 check. And you will see lots of emails. If you put them in  
19 date order, you will see this is when things started to get a  
20 little sideways.

21 Next -- one other thing on the trust and honor system.

22 There is a suggestion here this guy's articles and  
23 what he writes about is the reason why he lost his job.

24 Three years, this guy -- they found out about this in  
25 2013, he lost his job in 2016. Three years this is going on,

1 this guy doing his stuff, three years this is going on. They  
2 could have done it at any time if they wanted to get him for  
3 his blog January 2013 would have been a good time, but that is  
4 not the way they work. It is free speech, you can do it, just  
5 do it within your personal use, don't speak for the university.

6 You heard about Stomping on Jesus, and other  
7 controversies like that at the university. Those folks all  
8 have their job. One guy wouldn't fill out the forms, one guy  
9 told the boss no, told the dean no, told the Provost no, told  
10 his lawyer no. He is the one without a job. That is  
11 insubordination, that is the difference.

12 So we come to the last, he was one of two FAU faculty  
13 members that were insubordinate by refusing to submit the  
14 conflict of interest forms.

15 This is Mrs. Copeland, she lost her job. They want to  
16 be little this. Mrs. Copeland, you will see the same  
17 violations cited for her as Professor Tracy. In fact, if you  
18 compare the letters, they are pretty close, same issues,  
19 incompleteness, inaccuracy, not reporting what you are supposed  
20 to report.

21 There was some argument during the trial about whether  
22 did she get the letter or not. This is an address in  
23 Tallahassee, and also sent by U.S. Mail and email, and the  
24 question was asked, did she get paid?

25 No. The answer was no, she didn't get paid. The

1 university didn't accept her effort to resign. The university  
2 recorded it as a termination because of the things that had  
3 occurred, just like Professor Tracy.

4 This is the one that didn't fill out the forms, this  
5 is the one Dean Coltman was her supervisor, too, same  
6 supervisor, same violations.

7 So, if you compare the two letters -- put up 28 real  
8 quick. This is the termination letter for Professor Tracy. It  
9 is dated January 5th, folks, not the 8th, and not in December.  
10 This is after the proposed termination letter and the extension  
11 given to Professor Tracy because of the holidays so that he  
12 would have extra time to respond to the letter of the proposed  
13 termination, but he never did.

14 This is the letter Professor Tracy got. I encourage  
15 you to compare it to the Copeland letter.

16 Let's see what Mr. Moats told Professor Tracy about  
17 these things. Moats 2 and 3, please.

18 (Thereupon, the video deposition was played.)

19 The rules don't apply, not to Professor Tracy.

20 268, let's see what his lawyer told him.

21 This is Mr. Johnson, his union appointed lawyer who is  
22 representing him at this time. He is gone, as you can see, but  
23 this is the email between him and Professor Tracy.

24 And he writes to professor Tracy, and he says the  
25 general rule is that you work first and grieve later. How many

1 times did we hear about TPHA? For some reason he didn't do  
2 that.

3 Your refusal to sign the document and then raise your  
4 concerns with your employer leaves us in an untenable position.  
5 This is particularly true when the charge finds its basis in  
6 insubordination. I am trying like hell here, Jim, but I keep  
7 running into walls.

8 He's gone. So, that is what I told you were the  
9 reasons. I told you we would give you the proof of that. I  
10 hope you feel like we delivered.

11 This is going to be quick. I just want to make sure I  
12 am accountable.

13 This is a timeline we went through. You see page one,  
14 I am going to blow through this so you can see what we told  
15 you, and then you will know that is how it happened. Page two.  
16 I want to say quickly -- I want to talk about the notes for a  
17 minute so you can put those in context.

18 There are two sets of them you will have to put  
19 together. 2-A, Plaintiff's 2-A.

20 These are the handwritten notes you heard so much  
21 about. Read them all, don't just pick out little segments, put  
22 them into context. These are the ones that Heather Coltman,  
23 she is the dean -- remember she told you she had never gone  
24 through this before. She was interim dean at this time and she  
25 was trying to figure out how to handle this.



1           There is some suggestion they had an agenda, that this  
2 was just a facade. That is why the second part of the notice  
3 is so important.

4           230. That is the last page of 2-A. Remember I asked  
5 her -- you remember I asked her, did you do your homework  
6 before this meeting? She said, yeah, I did a lot of research  
7 on this and tried to find out something that might be  
8 applicable.

9           I can't go through it all with you, but if we page  
10 through it, what I hope you see is there is a lot of work that  
11 went into this, a lot of study. She is trying to make sure she  
12 does the right job, trying to make sure she addresses all of  
13 the issues. That is her job. She is the dean, she runs the  
14 school, that is what she has to do.

15           At this point in time you may remember there were  
16 issues raised about safety. Remember I said, you know, they  
17 were trying to figure out what they should do to protect  
18 people, and I talked about safety and why is FAU involved in  
19 this if you are writing a personal blog and it says James Tracy  
20 or a pen name, John Jones, whatever, and also you are connected  
21 to the university. Why are they identifying this with the  
22 university? You know why. That gives him a platform for it.  
23 If he uses the university in a book, people might think it is  
24 more reliable. Common sense.

25           You heard the jury instruction, you don't have to

1 drag -- put your common sense out the door. Put your common  
2 sense in this and it will solve 99 percent of the issues.

3 Those are the notes, you will have them.

4 Let's look at Defendant's 15, this is the chronology I  
5 was talking about. Here is the memo. Put these in  
6 chronological order and you will see what is going on.

7 This is the memo, she tells him, hey, at the bottom,  
8 she says, your blog might be an issue, you might want to report  
9 that.

10 Remember all of the dialogue they are suggesting  
11 nobody told me about my blog? Yes, they did, it is right  
12 there. And he said he didn't have to. Honor system, he said  
13 it is not reportable. Okay.

14 So, let's see, this is in sequence, now let's look at  
15 114. This is 114, we looked at this before. Can we back it  
16 out a little.

17 Okay, if you look at the first paragraph, I wanted to  
18 communicate on a non FAU email. That is what I was talking  
19 about, the cloak and dagger kind of stuff. Professor Tracy, I  
20 think you all know by now, is a very suspicious guy. This  
21 professor is older. The union guy talked about a boogie man  
22 under the bed, and talking about seeing shadows. It may be  
23 he -- he is a suspicious guy, if I do this, maybe they will do  
24 that.

25 Maybe you ought to do it and see what happens and then

1 deal with it. But he is a suspicious guy. This is his email  
2 on a non FAU site.

3 Remember I talked about safety, I asked him about  
4 safety?

5 Can we go down and hit the safety issue a little bit.  
6 Let's see how seriously he took the safety issues.

7 This is -- he is communicating with his buddy now.  
8 "Other than that, they just said the university is getting a  
9 lot of heat and expressed concern about my safety." The  
10 university talking about his and his family's. "Most of the  
11 pleas for my dismissal are quite shrill. Here's one you will  
12 enjoy." He talks about it, and at the end of it he says  
13 "someone went into our campus bookstore and tore my chapter out  
14 of the book!"

15 The university is looking to see that everybody is  
16 taken care of, and this is how he is dealing with it.

17 You remember Vice Provost Alperin and Dean Coltman  
18 said when they talked about the safety issues, he had a strange  
19 reaction, didn't comment at all. He didn't. He doesn't see it  
20 that way, he sees books, blogs and things like that.

21 They are worried about the university, the faculty,  
22 the students and things like that. Not so much per Professor  
23 Tracy.

24 This is the response, this is what I want you to look  
25 at when you go in the jury box -- or jury room. 16, this is

1     how he responded. You will have an opportunity to read it. Go  
2     to the end where he addresses the safety issues.

3             >Your letter expresses the FAU administration's  
4     concern over the safety of the institutions' students, faculty  
5     and staff. If the administration believes that the inordinate  
6     media attention afforded my public remarks poses a security  
7     concern for the university's constituents, then it has the  
8     right to act on such concerns."

9             That is his response. You will be able to look at the  
10    letter about what he said about using resources, about his  
11    blog, about the disclaimers. In the initial letter, she is  
12    asking about the disclaimers, can you show them to me, and he  
13    writes to his friend and says, guess, I am not sure, and in  
14    here he chastises them for asking for them.

15            Then we move on through 28, filed a grievance,  
16    grievance resolved, we talked about that.

17            Let's look at the audits so we can put that into  
18    context. It had nothing to do with Professor Tracy. That  
19    would be Plaintiff's 33, please, top paragraph. Top paragraph,  
20    thank you.

21            This is an email from his boss on November 2nd to  
22    Professor Tracy, and she explains here is Diane Alperin's  
23    account. That is the Vice Provost. This was added in FAIR --  
24    you heard so much about FAIR -- in 2014, in response, as I  
25    recall, to an audit and an issue with grant applications. It

1 would, I assume, have been there when you signed it, signed  
2 previously. I hope you will reconsider and sign the assignment  
3 in FAIR, drop box and all.

4 Well, we know he didn't. 2014 is when this went in.  
5 2014 is when the audit occurred and had nothing to do with  
6 Professor Tracy. Nothing. The evidence they were trying to  
7 present to you is that it was some conspiracy to get him. It  
8 is not about him.

9 Okay. Let's -- we went through this. This is where I  
10 told you -- we talked about all of the people trying to talk  
11 him into complying, Moats, I didn't have his attorney, Mr.  
12 Johnson, there. You heard time and time again during the  
13 course of the trial about people trying to convince him and to  
14 each he said no. Then we heard about these common expressions,  
15 if in doubt, fill it out.

16 Comply and grieve. How many times did you hear about  
17 that? You heard about that from Mr. Broadfield, although Mr.  
18 Broadfield is only there in 2013, he is at the University of  
19 Miami now. Even then he was telling him this is what you  
20 should do.

21 Mr. Robe told him he needed to do something about the  
22 use of the equipment. Mr. McGetchin came in and testified, he  
23 is the union president now, comply and grieve. They all say it  
24 except one.

25 So, then we went through the emails, Plaintiff's 18.

1 Just a friendly reminder, see how many people that is to. It  
2 is not to Professor Tracy, that is to a whole group. Come on,  
3 get your stuff in. One person didn't.

4 Then 23, this is Defendant's 23. This is the one  
5 where he is not going to click the box. This is when things  
6 started to get a little like, why not? What is going on? Why  
7 aren't you clicking the box?

8 Dean Coltman said, yeah, I started to get suspicious,  
9 I started at the end to think he was provoking this.

10 Here is when the rubber met the road. They had given  
11 him an extension, last chance, Exhibit 49. Okay. So, what was  
12 he doing during this period of time? Remember, we heard about  
13 paternity leave, and he wasn't checking his emails.

14 Exhibit 165. Back it out, please. This is on  
15 December 13th, this is when he is not checking emails, too  
16 busy, here is what he is writing and he is writing in response  
17 to the Pozner letter.

18 Let's look at Exhibit 157. Here's the article he  
19 published on -- it looks like December 15th, but let's look at  
20 224-A redacted and see when he really published it.

21 Okay, thank you, we have to go to the last page.

22 This is the list that you are going to get and, let's  
23 see, right there, he publishes this on December 14th. This is  
24 the last day he is supposed to respond and given an extension  
25 to respond and tell them about everything. He is writing an

1 article that he publishes on his blog.

2 Why is that important? I think it is important  
3 because it is about priorities, what Professor Tracy's priority  
4 is. His job is on the line clear as a bell, and this is what  
5 he is spending his time on.

6 The school wasn't his priority, the school was a  
7 platform for him. That is not what it is supposed to be.

8 Okay. Let's go to the next page and then we get to,  
9 of course, the end. Let's do -- each one of these things I  
10 think has been proven to you. 216-A, we looked at that  
11 already, that is the letter from the lawyer.

12 And finally, the union lawyer is gone, everybody else  
13 has told him he has an untenable position, and here we are in a  
14 federal lawsuit, never grieved, never filed notice. He has ten  
15 days to tell us what is going on, no response, never grieved,  
16 never responded.

17 If he really cared about his job, why wouldn't you  
18 respond? Why wouldn't you say, okay, you told me about the  
19 blog now? Look at the Notice of Discipline, look at his own  
20 documents, you will see the blog is clearly spelled out. No  
21 response.

22 Okay, things you won't see. There is a pile of stuff  
23 over there, and what you are not going to see are any  
24 disclosures of money for research, any disclosures. You will  
25 see nothing in there that says he can't blog, nothing in there

1 that says he can't do his research, nothing in there that says  
2 he can't speak.

3 Their theory of the case kind of exploded right there  
4 in front of you during the course of this.

5 Remember the theory of the case, what counsel told you  
6 in opening statement. I will read it. I keep track.

7 The evidence will show you that there was another  
8 public backlash about Professor Tracy's blogging that garnered  
9 attention, and within hours of the public complaint about  
10 Professor Tracy's blogging, the Defendant university made a  
11 decision to terminate him, proposed termination by Dean  
12 Coltman. That was the theory of their case.

13 Plaintiff's 39, please. That is the notice of  
14 termination that she prepared.

15 Okay. Let's go to -- here is when she got the  
16 article, 4:23, okay. Dean Coltman writes and sends the draft  
17 termination letter at 4:23, she sent the termination letter at  
18 4:23. Oh, one thing, remember Jason Ball, the tech guy? Not  
19 only is this two minutes later, two minutes is still after --  
20 or before, but remember Jason Ball, the guy that talked about  
21 the 0500 on there? You see that 0500 on the document, that  
22 means five hours earlier, Greenwich Mean Time. Counsel said,  
23 how do you know that, and he said, I know that, I know that is  
24 what that means.

25 So, here is Pozner -- put up -- remember the times --



1 37-B. This is when it is sent, the Pozner article is sent to  
2 Dean Coltman, it is after she has already done the notice of  
3 termination.

4 Either she is psychic or this didn't have anything to  
5 do with the notice of termination. That was their theory, that  
6 is what they told you they were going to prove to you. It is  
7 the only thing they can come up with that might get some  
8 excitement three years later, but it doesn't work.

9 When you go back you will have the jury instructions  
10 with you. I want you to think about a few things, the  
11 consistency of statements, whether they make sense.

12 I asked Professor Tracy about his donations. What was  
13 the money used for? There were -- I kept track of these, he  
14 referred to the money as donations, remittances, honorariums,  
15 remunerations, gifts and a paltry sum.

16 Here is what he is telling the people that were giving  
17 money what their money was for. Research. That has to be  
18 disclosed.

19 So, why didn't he just answer my question and say it  
20 was for research? That would have been the honest answer. We  
21 put up professionals, remember professionals in the collective  
22 bargaining agreement. Common sense, your profession, he  
23 teaches on media study and conspiracy theories, that is his  
24 profession.

25 So, when he talks about it or blogs on it, that is his

1 professional view because that is his profession. That is why  
2 he refers to FAU, that is why he uses that as a platform.

3 Vice Provost Alperin said it pretty well. She said,  
4 look, I can't imagine another place that would have gone this  
5 long, months of having an employee say, no, I'm not going to do  
6 it, particularly one that was president of the union that  
7 signed the collective bargaining agreement. She didn't say  
8 that, but I am adding it. And would have kept their job, but  
9 at FAU we tried.

10 Dean Coltman, I am sure you got this, she didn't want  
11 to the fire this guy. She tried everything she could do to  
12 avoid that and nothing worked. He just wouldn't respond.

13 So here's -- I am sorry -- oh, I will end on a couple  
14 of notes.

15 Warnings, we talked about giving people warnings  
16 before they are terminated. Fair warning. Let's go through  
17 the warnings that he got quickly.

18 Exhibit 15. Okay, this is number one, Plaintiff's 18,  
19 two, 31, three, 33, four, 23. This is one where he talks about  
20 blogging, he knows what it is about, this is his own email.  
21 October 28, 2015, he knows.

22 This is the one where he says I will sign something,  
23 but I don't want to tell anybody really what I am doing.

24 This is when the book is engaged in for sale on  
25 Amazon. He is looking for immunity so he doesn't have to tell

1 anybody anything.

2 The way it works is, the employee talks, they have a  
3 discussion and they work through it. You can't have a  
4 discussion unless the employee tells you what they are doing,  
5 and he never did.

6 Okay, number six, 33. Okay. 25 -- is that 25? It is  
7 getting serious now. 49. He refused not to submit the forms.  
8 This is the notice of proposed discipline, termination.

9 Read that letter, personal blog, you cannot been more  
10 clear than that. He never responded.

11 29. January 4th, this is when they write and say,  
12 hey, what's up with the book, please respond. No response.

13 78 -- that is 78, and finally 28. 4, that is the  
14 letter of termination and it spells it out again. Of course,  
15 he never grieves.

16 So, at the end of the day the question you have to ask  
17 is would they have treated this guy the same way regardless of  
18 his speech? Would they have asked him to check the box? Would  
19 they have asked him to fill out the forms, those kind of  
20 things? And I think the answer is crystal clear, yeah, because  
21 he was speaking, blogging, all that stuff for years and years,  
22 but when he stopped checking the box, when he stopped  
23 responding to direct requests from his supervisor, that is when  
24 things changed.

25 So, as far as the verdict form goes -- it is in here

1 in my mess somewhere, sorry, folks.

2 The verdict form will ask you the question if  
3 Professor Tracy's blogs speech was a motivating factor to  
4 dismiss him from employment. No. If it was about that, they  
5 could have done it any time they wanted to do it.

6 The next question: Would FAU have discharged  
7 Professor Tracy from employment even if FAU had not taken  
8 Professor Tracy's blog speech into account? Yes. That is  
9 Copeland, the same thing as to her.

10 The two people who made the decision testified for  
11 you, that is Vice Provost Alperin and Dean Coltman, who is at  
12 James Madison now, not even here, she has nothing at stake.  
13 She told you what her thoughts were. As for the cocktail glass  
14 and things like that, read the article underneath it. What she  
15 told you, she sent that to the media person.

16 When you read the article underneath the cocktail  
17 glass with the lady going like this, what you will see is, the  
18 first thing in the article, Professor Tracy's termination,  
19 media hoopla, she was writing it saying here it comes.

20 *THE COURT:* That is an hour and one minute.

21 *MR. CURLEY:* Thank you, your Honor.

22 Folks, I apologize for using an hour, I hope you think  
23 we have proven our defense. Thank you for your attention, an  
24 hour is a long time, I appreciate it. Thank you very much.

25 Thank you, your Honor.

1           THE COURT: Okay. Take your stuff down and the  
2 Plaintiff can come forward with rebuttal closing.

3           All set?

4           MR. LEO: Yes. May it please the Court.

5           THE COURT: Yes.

6           MR. LEO: We heard a lot of talking points throughout  
7 the past two weeks from the university, we don't police  
8 people's lives, Professor Tracy does not follow the rules,  
9 comply, then grieve. These are talking points, members of the  
10 jury. Remember, what the lawyers said from both sides is not  
11 evidence.

12           What the witnesses said, that was evidence. What the  
13 witnesses wrote, that was evidence. It sounds like they are  
14 coming up with more talking points, insubordination. It is not  
15 insubordination to request clarification from your supervisors.

16           No matter how many times opposing counsel says he said  
17 no, he said no, look at Professor Tracy's writing and find one  
18 time when he says no, I won't do that, I refuse. You won't  
19 find the word I refuse once to his supervisors. Over and over  
20 and over again he asked for clarification.

21           Right here in this box we have all the answers that  
22 were provided to Professor Tracy. All of them. Not one. Not  
23 one response. Professor Tracy, let's help you understand.  
24 Professor Tracy, this is how the policy works, this is what we  
25 want.

1           Not once did they respond. No, they were looking,  
2 they were still looking for those winning metaphors.

3           They didn't want to comply, they didn't want him to be  
4 in compliance with their directives. They needed something,  
5 they needed something so they could beat the First Amendment.  
6 That is 2013, members of the jury, they want you to believe  
7 they would have fired him right there.

8           Really? When everybody is paying attention to it,  
9 they would fire him right there? No. In secret they plotted,  
10 they plotted to beat the First Amendment because they knew  
11 James Tracey was not going to stop publishing, and they were  
12 afraid, they were so afraid of what he was going to write.

13           Comply and grieve, I bet they love that mantra, comply  
14 and grieve. You know what the union thinks about that, comply,  
15 grieve, comply, grieve. Sorry, can't grieve, rookie president.  
16 When Chris Robe didn't know the policy, he thinks Professor  
17 Tracy should. No training, no instructions. I think this  
18 check box is new. Does he file a grievance for the chapter?  
19 Does he represent the union and defend, not just Professor  
20 Tracy, but the contract? No.

21           What kind of union is that? What kind of a union  
22 turns on their faculty members, their dues paying members, and  
23 when they are deposed, oh, he messed up, it was him. Oh, yeah,  
24 they are covering their own.

25           Don't mistake what these people are saying for what

1 happened, okay? When they say that Professor Tracy messed up,  
2 they really mean they messed up, and they are trying to pass  
3 the buck. Comply and grieve, what that means to you is comply  
4 and then leave. That is what it meant when he checked that box  
5 and submitted his annual assignment over and over and over  
6 again, but that wasn't good enough. He had to comply to a  
7 policy that nobody knew what that was at the school.

8 *THE COURT:* Counsel, not too fast so we can get a  
9 record.

10 *MR. LEO:* I'm sorry, I will try. I get too excited, I  
11 can't help it.

12 They wanted him to comply, sounds like another talking  
13 point. They didn't want to discipline him. They didn't want  
14 to fire him. That is about as believable as Dr. Coltman saying  
15 this wasn't a cocktail. Do you remember that? That is just  
16 water with lemon, and that is not a woman with her hands in the  
17 air celebrating after Coltman writes having a nice day, in  
18 response to Professor Tracy's termination?

19 Yeah, talking points, he solicited money. He  
20 solicited money for having a donate button on the blog, in case  
21 someone like the Pozners tried to take it down because they  
22 didn't like what he was saying. He got less than a thousand  
23 dollars in donations in a two-year period. This is a  
24 significant fact ignored by the Defense in this case.

25 They don't want to talk about the policy and what has

1 to be exposed. You have to look at the policy, good lines,  
2 additional information that was to all of the faculty members  
3 but Professor Tracy.

4 Remember how they explained the change from 5,000  
5 to -- from 10,000 to 5,000? You don't have to report financial  
6 interest, investments, stocks, those don't have to be reported,  
7 but Professor Tracy got donations for his blog, he should have  
8 reported it, he should have known.

9 Ladies and gentlemen, when you look through the  
10 extensive forms, find where it says if you get donations for  
11 research, you need to report it. It is not in there. They  
12 make a big deal about his emails when he is trying to make out  
13 the policy. Friends, union, colleagues, they are not helping  
14 him, and some say maybe you should fill it out.

15 Michael Moats told him in 2013, don't put your blog on  
16 the form. He helped him write a letter, that February 2nd  
17 letter, Michael Moats helped him write it, and in 2015,  
18 selective memory, oh, things changed. What changed? Not the  
19 policy.

20 Maybe Michael Moats changed. Maybe the union changed.  
21 Maybe they didn't like what Professor Tracey was saying any  
22 more.

23 You heard Dr. Zoeller, he didn't like him. He didn't  
24 like him as he sat in court making it seem like Professor Tracy  
25 did something wrong.



1           Here they expect us to believe that Professor Tracy's  
2 publicly available blog, which is free to the public, free of  
3 charge, is something that was a mystery, something that he hid  
4 from them. Global Research, ladies and gentlemen, is just a  
5 mirror, it republished its posts from memoryhole on their blog.  
6 They want you to believe that is a mystery when the university  
7 put it on his faculty bio, and put it on the web page.

8           You will see it on Exhibit 36, an award for an article  
9 about cell phone radiation and a project called Project Censor,  
10 because nobody is reporting that Professor Tracy did it on his  
11 own time on his blog, but now they want you to believe that was  
12 a professional activity, when there is no definition for  
13 professional, no definition for compensated, uncompensated, no  
14 definition for most of the words you would need to know to  
15 really understand how this policy works, and why everybody at  
16 the school has a different interpretation of it.

17           They say they didn't fire him for his speech. Don't  
18 take my words for it or opposing counsel's words for it, take  
19 the dean's who initiated the termination. Take the dean's  
20 words, Plaintiff's Exhibit 45. Right here, Plaintiff's Exhibit  
21 2-A, I believe page four where she says, a blog can look like  
22 academic work, but we have procedures and reviews at many  
23 levels, vetting, not an appearance of scholarship, but is real  
24 scholarship.

25           They knew in 2013 that his blog was not a professional

1 activity according to the university. That is Dean Coltman's  
2 words. They knew it, and that is why they didn't fire him back  
3 then.

4 But that didn't stop him from waiting two years, and  
5 just two days after the decision to terminate Professor Tracy  
6 she says, with every blog, post, tweet, they hold him  
7 accountable for his despicable behavior. What was that  
8 behavior, turning in a form for something they knew about  
9 already?

10 Honor system, trust, you heard a lot of talking points  
11 from the university, but I have seen no honor.

12 Where was the honor in anything that the Defendant  
13 university and its agents have done in this case? They come in  
14 here and make it seem like their emails were five hours behind.  
15 Really? Why did they do that? Because they know how bad it  
16 looks.

17 On December 10th there is an article in the paper by  
18 3:00 o'clock, and by 4:00 o'clock they are drafting up a  
19 termination letter. They want to throw up an email sent later  
20 to make it seem like that is the first time they knew about it,  
21 as though they weren't getting press updates on it regularly.

22 And then they come in here and they make it seem like  
23 his behavior was despicable, as if he concealed from them  
24 something they knew about, and they were watching. Check out  
25 the memoryhole blog, from Dean Coltman. They were circling the

1 blog and reading it and watching for the winning metaphor, and  
2 they want you to think he is despicable for doing something  
3 they were unaware of.

4 What about the university's despicable behavior,  
5 canceling his classes, no need to give an explanation? Dr.  
6 Coltman didn't have any explanation for that. Changing his  
7 class schedule to conflict with his child care duties, really?  
8 Really?

9 That is despicable. That is despicable when you are  
10 planning to violate the First Amendment and at the same time  
11 trying to make him uncomfortable. Comply and leave. Refusing  
12 to clarify policies.

13 Why? Why didn't they just respond, say, Professor  
14 Tracy, here is what we wanted, put the blog on the form. Why  
15 didn't they do with every other faculty member, have a meeting  
16 with him like they did with Ms. Copeland? The phantom firing,  
17 she resigns and they fire her ten days later. That is just  
18 like Professor Tracy, right? Not like it, she wasn't tenured,  
19 she had a meeting and afterwards she decided she didn't want to  
20 work there anymore. Is anyone surprised?

21 Kajiura. Professor Kajiura had a meeting, he gets the  
22 notice of discipline. You are going to have it, it is  
23 extensive, they had a long laundry list of things. He gets a  
24 five-day suspension. He wasn't tenured anywhere near Professor  
25 Tracy.

1           Then he grieves, denied by Dr. Alperin. So, of  
2 course, that is what they want Professor Tracy to do. That is  
3 that mantra, comply and grieve. Kajiura loses his grant, and  
4 the students don't graduate. They are so concerned about the  
5 students, talking points, that is all it is. And what they  
6 have mistaken, sadly, is that Professor Tracy didn't respond to  
7 his termination.

8           Members of the jury, we are sitting here today because  
9 Professor Tracy did respond to his termination, he filed a  
10 First Amendment lawsuit. He is grieving, this is his  
11 grievance. He is appealing his own unlawful termination to you  
12 under a higher law, the Constitution of the United States of  
13 America, the law they planned in 2013 to circumvent, to beat.

14           He is appealing to you because they broke the first  
15 rule. It is the first one for a reason, and to this day they  
16 continue to pretend like they didn't break that rule.

17           They want you to believe that Professor Tracy broke  
18 their rules, rules that they didn't follow themselves. They  
19 want to ignore the First Amendment finding winning metaphors.  
20 Dr. Coltman couldn't explain it, that note, I don't know.  
21 There is nothing to explain. It is black and white, members of  
22 the jury, they knew his speech was protected, and they fired  
23 him for it in 2015.

24           Honor system. What honor? Where was the honor in the  
25 way they handled any of this? Where was the honor in treating

1 an outstanding professor the way they treated Professor Tracy?

2 That is not my words, I didn't say he was outstanding,  
3 that was Dean Coltman, all the members who reviewed the  
4 teaching.

5 Professor Tracy never missed a class, never failed to  
6 honor a single commitment. Here they are with more talking  
7 points making it seem like he wasn't able to do his job.

8 You will have his teaching evaluations back there,  
9 look at them, explore them, find anything in there that shows  
10 Professor Tracey was not honoring his time commitments.

11 The only thing Professor Tracy did wrong is make his  
12 students think. Maybe that is not what they want at Florida  
13 Atlantic University, maybe that is not consistent with the  
14 highest standard of ethics.

15 They are so afraid what Professor Tracey was writing.  
16 They are so afraid what Professor Tracey was writing in 2013,  
17 they are so afraid what he was writing in 2015. Members of the  
18 jury, as they sit here today, they are still afraid what he is  
19 going to write. Maybe he will write a book, maybe we will be a  
20 chapter in that book.

21 I submit, members of the jury, they should be afraid  
22 of what you all are going to write when you go back there, and  
23 you have two simple questions, do you find by a preponderance  
24 of the evidence, and that is more likely than not -- this is  
25 not a criminal case, ladies and gentlemen. I submit we have

1 proven beyond every doubt Professor Tracy's claim. The answer  
2 to that question is yes.

3 FAU would have discharged Professor Tracy from  
4 employment even if FAU had not taken Professor Tracy's blog  
5 speech into account? No. That is right here, Plaintiff's 45,  
6 the voice of the College of Arts and Letters, with every blog,  
7 post, tweet his termination holds him accountable for his  
8 despicable behavior.

9 Don't take my word for it, don't take opposing  
10 counsel's word for it. What we say is not evidence, this is  
11 evidence.

12 Thank you for your time and service. Thank you.

13 *THE COURT:* Okay, so, at this time, ladies and  
14 gentlemen, you will go back into the room where you will be  
15 deliberating, you won't start deliberating yet.

16 We need to get all of the exhibits together and bring  
17 them back to you and it is only when the exhibits are actually  
18 brought into the room that you can begin deliberating. What  
19 you can do is make yourself comfortable. Lunch has been or  
20 will be delivered shortly.

21 You can select a foreperson, that you can do. Only  
22 when the exhibits are brought in, which will be shortly. I  
23 will have the attorneys come and verify that everything is  
24 there. Remember, if you have any questions at all at any time,  
25 write your question down on a piece of paper, have your

1 foreperson sign it, knock on the door, and our Court Security  
2 Officer will bring it to me.

3 At no time should you ever tell me what is going on  
4 with your deliberations, what you are voting, how the voting is  
5 split, nothing at all. I will only want to know what the  
6 question is, and I will answer it when I talk to the attorneys.

7 (Jury out at 11:56 a.m.)

8 *THE COURT:* Okay, you may be seated.

9 I am going to ask you to take all of the posters down,  
10 and have representatives from both sides come up, look through  
11 all the documents and put on the record that all Plaintiff's  
12 exhibits are there, all Defense exhibits are there. You can  
13 put on the record that the CD player and CD are there.  
14 Anything marked for identification should be off to the side,  
15 they do not go back to the jury.

16 And I also need a good cell phone number associated  
17 with an attorney from each side. I ask you to keep your cell  
18 phones on at all times and be on standby to be able to respond  
19 if we get a note or call -- or just a note so we can call you.

20 If I may ask from the Plaintiffs, have you reviewed  
21 the exhibits?

22 *MR. MEDGEBOW:* Yes.

23 *THE COURT:* Are they all there?

24 *MR. MEDGEBOW:* Yes.

25 *THE COURT:* From the Defendant, have you reviewed the

1 exhibits and are they all there?

2 *MS. GRIFFIN:* Yes, your Honor.

3 *THE COURT:* Okay, the exhibits will be brought back,  
4 the verdict form will be brought back, and the CD player.  
5 Acceptable to both sides?

6 *MR. MEDGEBOW:* Yes, your Honor.

7 *MS. GRIFFIN:* Yes, your Honor.

8 *THE COURT:* And there is a CD that goes with it, which  
9 is one of the exhibits. Which is what?

10 *MR. FEICHT:* 225 was in this stack.

11 *THE COURT:* Everybody should stay within close  
12 proximity. If you want to grab lunch, that is fine on Clematis  
13 Street, that is a short distance. If you are eating lunch, you  
14 might want to wait about ten, 15 minutes. Sometimes things do  
15 arise right away. Everyone is entitled to grab a bite, and if  
16 it means communicating to the jurors we are waiting for you to  
17 come back, that is fine. I won't respond to anything until you  
18 came back.

19 I did want to say after 435 docket entries, you have  
20 all done your job.

21 I don't necessarily take the time after the verdict is  
22 returned to make remarks to the parties or to the lawyers. The  
23 lawyers, you know, they are in court a lot and this is what  
24 they do, although this is a different kind of case. I would  
25 bet that it is not the kind of case that they do every day, but



1 for the parties who have been here throughout the trial, maybe  
2 this is your first time in court, maybe it is not, but I just  
3 want to let you know that, first of all, by virtue of the 435  
4 docket entries, that is a pretty extensive file for one case.  
5 The point being there was a lot of work that went into this  
6 case on both sides, and there was no stone left unturned as far  
7 as the Court could see in terms of the advocacy that each side  
8 put forth in terms of representing the parties.

9 I hope the parties leave after the verdict is  
10 returned, regardless of what the outcome of the verdict is,  
11 feeling that you were very well represented, your interests  
12 were presented, and are now in the hands of the -- the decision  
13 is now in the hands of the jury. The lawyers have done  
14 everything they can do, and the Court has done everything it  
15 can do to administer the case. The jury system is that eight  
16 jurors will decide the verdict on the verdict form.

17 I hope you have been treated fairly and impartially by  
18 everyone and you have been well represented, and while it can  
19 be a different experience to be in a court of law, it can be  
20 stressful and emotional, particularly when the issues breed  
21 emotion. It is, nevertheless, an experience that genders in  
22 you a trust in the judicial system of Government.

23 Have a good lunch, and we will see you when we have a  
24 verdict.

25 *(Thereupon, a short recess was taken.)*

1           *THE COURT:* The note says the jury reached a verdict,  
2 foreperson Michael Klein who appears to be juror number four.

3           Do we have everybody here?

4           *MR. LEO:* Yes, your Honor.

5           *THE COURT:* All right. We will bring the jury in.

6           (Thereupon, the jury returned to the courtroom at 3:32  
7 p.m.)

8           *THE COURT:* Okay, welcome back, everyone may be  
9 seated.

10           The Court has received a note and it says, "the jury  
11 has reached a verdict. Foreperson, Mr. Klein."

12           Mr. Klein, have you reached a verdict?

13           *THE JUROR:* Yeah.

14           *THE COURT:* Would you please hand the verdict to our  
15 courtroom deputy? Thank you.

16           Okay, the Court finds that there are no  
17 inconsistencies or irregularities with the verdict, and so, I  
18 am now going to ask our courtroom deputy, Mrs. Richardson, to  
19 publish the verdict, which means she is going to read it aloud  
20 in open court. And I would like the jury to pay close  
21 attention as the verdict is being published because following  
22 publication, the jury may be polled, that is, each juror may be  
23 asked individually whether the verdict as published constitutes  
24 his or her individual verdict in all respects.

25           Please listen carefully.

1           Melanie, would you please publish the verdict.

2           *THE COURTROOM DEPUTY:* Case Number

3           16-CV-80655-Rosenberg, James Tracy versus Florida Atlantic  
4           University Board of Trustees, Florida Atlantic University.

5           We, the jury, return the following verdict: Do you  
6           find from a preponderance of the evidence, one, that Professor  
7           Tracy's blog speech was a motivating factor to discharge him  
8           from employment? Answer: No.

9           That meant that they did not have to answer question  
10          two. Signed by the foreperson with today's date.

11          *THE COURT:* Would either party like the Court to poll  
12          the jury? From the Plaintiff?

13          *MR. BLICKENSDETFER:* Yes, your Honor.

14          *THE COURT:* Melanie, would you please poll the jury.

15          *BY THE COURTROOM DEPUTY*

16          Q. Juror number one, was the verdict as read your verdict?

17          A. Yes.

18          Q. Juror number two, was the verdict as read your verdict?

19          A. Yes.

20          Q. Juror number three, was the verdict as read your verdict?

21          A. Yes.

22          Q. Juror number four, was the verdict as read your verdict?

23          A. Yes.

24          Q. Juror number five, was the verdict as read your verdict?

25          A. Yes.

1 Q. Juror number six, was the verdict as read your verdict?

2 A. Yes.

3 Q. Juror number seven, was the verdict as read your verdict?

4 A. Yes.

5 Q. Juror number eight, was the verdict as read your verdict?

6 A. Yes.

7 *THE COURTROOM DEPUTY:* We have a unanimous verdict.

8 Okay, ladies and gentlemen, on behalf of the parties  
9 and the attorneys, I want to thank you for your time and  
10 consideration of this case.

11 I wish to advise you of some very special privileges  
12 enjoyed by jurors. No juror can discuss the verdict except by  
13 court order. For many centuries our parties have relied on  
14 juries for difficult cases. We have recognized for hundreds of  
15 years jury discussions should remain private, they're not to  
16 speak about the jury's work.

17 The lawyers and representatives are not permitted to  
18 initiate any communication with you about the trial, however,  
19 you may speak to the lawyers or anyone else about the trial.  
20 You also have a right not to speak with anyone.

21 A request might come from those who are curious or  
22 might find fault with you. It is up to you to preserve your  
23 time as a juror.

24 We wish you a nice rest of the day and week. You are  
25 released from jury duty in this trial.

1 Thank you.

2 *(Thereupon, the jury leaves the courtroom.)*

3 THE COURT: Okay. You may be seated.

4 If I could ask the Defense to prepare a final judgment  
5 and email it to the Court at the Court's email address. Show  
6 it first to the Plaintiff to confirm that there is no objection  
7 to the form of the final judgment. If there is any objection,  
8 please include that in the email and explain what, if any,  
9 differences there are.

10 Other than that, is there anything else for the Court  
11 to address from the Plaintiff at this time?

12 MR. BLICKENSDETFER: Not at this time.

13 THE COURT: For the Defense?

14 MR. CURLEY: Thank you for your hard work.

15 THE COURT: Thank you, everyone, have a nice rest of  
16 the day, and I wish you well.

17 Consistent with the rules, please make sure all of the  
18 exhibits are filed within the timeframe and in the manner in  
19 which they need to be filed.

20 Thanks.

21 *(Thereupon, the trial was concluded.)*

22 \* \* \*

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25

1 I certify that the foregoing is a correct transcript  
2 from the record of proceedings in the above matter.

3  
4 Date: January 5, 2018

5 /s/ Pauline A. Stipes, Official Federal Reporter

6 Signature of Court Reporter  
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Pauline A. Stipes, Official Federal Reporter

<b>MR. BENZION: [1]</b> 7/15 <b>MR. BLICKENSDECKER: [5]</b> 4/14 5/3 32/12 75/12 77/11 <b>MR. CURLEY: [16]</b> 4/6 4/23 5/6 5/11 5/21 6/11 6/15 6/17 6/22 32/15 32/18 32/21 33/3 43/22 60/20 77/13 <b>MR. FEICHT: [2]</b> 4/1 72/9 <b>MR. LEO: [9]</b> 3/21 3/23 4/13 5/16 6/9 61/3 61/5 63/9 74/3 <b>MR. MEDGEBOW: [5]</b> 3/4 3/7 71/21 71/23 72/5 <b>MS. GRIFFIN: [2]</b> 72/1 72/6 <b>THE COURT: [49]</b> 2/7 3/6 3/12 3/22 3/24 4/5 4/8 4/16 4/24 5/4 5/9 5/12 5/19 5/23 6/2 6/10 6/14 6/16 6/19 6/25 7/3 7/7 31/22 32/8 32/13 32/17 32/19 32/22 32/24 60/19 60/25 61/4 63/7 70/12 71/7 71/22 71/24 72/2 72/7 72/10 73/25 74/4 74/7 74/13 75/10 75/13 77/2 77/12 77/14 <b>THE COURTROOM DEPUTY: [3]</b> 5/25 75/1 76/6 <b>THE JUROR: [1]</b> 74/12  / /s [1] 78/5  0 0500 [2] 56/21 56/21  1 10,000 [2] 37/5 64/5 100 [1] 1/22 10th [8] 21/20 21/25 22/3 43/10 43/13 43/19 44/4 66/17 11 [2] 1/8 15/1 114 [5] 40/1 40/8 40/11 50/15 50/15 114-A [3] 38/17 38/18 38/19 11:56 [1] 71/7 11th [2] 22/16 41/10 12/15 [1] 40/6 120 [1] 40/19 13 [4] 27/17 27/19 38/2 41/9 130 [1] 42/23 13th [1] 54/15 14 [2] 37/10 41/22 14th [1] 54/23 15 [6] 5/17 37/11 40/6 50/4 58/18 72/14 157 [1] 54/18 15th [1] 54/19 16 [2] 40/7 51/25 16-CV-80655-ROSENBERG [2] 1/2 75/3 165 [2] 41/6 54/14 18 [2] 53/25 58/18 18th [5] 8/22 8/23 11/12 12/9 40/1 19 [1] 42/12 1980 [1] 2/5 1st [3] 20/23 21/8 21/15	2 2-A [4] 48/19 48/19 49/4 65/21 20 [2] 5/16 36/9 2006 [1] 14/8 2010 [1] 28/12 2012 [4] 8/1 8/4 8/11 41/22 2013 [23] 9/9 9/17 9/20 10/23 10/25 12/7 13/22 14/5 14/8 14/11 14/14 16/19 37/10 39/17 42/12 45/25 46/3 53/18 62/6 64/15 65/25 68/13 69/16 2014 [5] 17/4 36/19 52/24 53/4 53/5 2015 [12] 9/21 10/24 17/13 17/17 17/22 36/9 41/9 44/13 58/21 64/17 68/23 69/17 2016 [1] 45/25 2017 [1] 1/8 2018 [1] 78/4 20th [1] 36/13 21 [1] 35/13 216-A [1] 55/10 216-I [1] 36/2 217 [1] 38/13 217-M [1] 38/5 22 [3] 12/7 36/7 36/8 224 [1] 38/3 224-A [1] 54/20 225 [2] 4/4 72/10 225-A [1] 4/2 22nd [2] 20/21 20/24 23 [3] 54/4 54/4 58/19 230 [1] 49/4 24 [1] 40/14 25 [3] 42/20 59/6 59/6 268 [1] 47/20 28 [4] 47/7 52/15 58/21 59/13 28th [1] 11/13 29 [1] 59/11 2nd [4] 19/12 19/18 52/21 64/16  3 3-A [1] 40/24 305-539-7340 [1] 1/23 31 [1] 58/19 32 [1] 42/20 33 [3] 52/19 58/19 59/6 3300 [1] 44/24 33073 [1] 1/19 33131 [1] 1/23 33401 [1] 2/4 36 [2] 3/8 65/8 37-B [1] 57/1 39 [1] 56/13 3:00 o'clock [1] 66/18 3:15 p.m [1] 21/25 3:32 [1] 74/6  4 40 [1] 5/15 4171 [1] 1/18 4200 [1] 1/22 4223 [1] 1/20 435 [2] 72/19 73/3	45 [3] 5/20 65/20 70/5 49 [2] 54/11 59/7 4:00 o'clock [1] 66/18 4:23 [3] 56/16 56/17 56/18 4th [1] 59/11  5 5,000 [2] 64/4 64/5 50 [3] 5/17 6/13 6/20 500 [3] 2/4 36/20 41/23 561-655-1980 [1] 2/5 5th [1] 47/9  6 60 [3] 5/15 5/20 5/21  7 7340 [1] 1/23 777 [1] 2/3 78 [2] 59/13 59/13  8 8th [1] 47/9  9 90 [1] 11/19 954-478-4223 [1] 1/20 99 percent [1] 50/2 9th [1] 19/20  A a.m [1] 71/7 abandon [1] 20/12 abandoned [1] 29/9 ability [6] 8/5 8/8 16/20 16/23 17/8 17/10 able [8] 6/6 7/13 12/16 26/10 33/9 52/9 69/7 71/18 about [138] above [2] 17/18 78/2 absolutely [1] 27/15 academic [3] 11/2 18/9 65/22 academics [1] 41/18 accept [2] 19/17 47/1 Acceptable [1] 72/5 accepted [1] 19/22 accomplishing [1] 8/6 according [2] 13/18 66/1 account [4] 31/12 52/23 60/8 70/5 accountable [4] 25/2 48/12 66/7 70/7 accused [7] 17/3 21/23 22/14 28/7 28/7 28/8 28/9 achieve [1] 15/7 acknowledged [1] 44/11 across [1] 17/7 act [1] 52/8 action [2] 9/18 39/13 activities [21] 8/5 12/1 12/4 12/13 12/14 13/5 13/25 16/6 16/15 16/17 25/13 26/1 26/2 27/20 27/22 28/3 28/22 38/12 39/15 40/12 42/11 activity [16] 13/8 13/13 17/8 19/1 19/2 23/19 24/14 25/11 25/22 25/25 26/14 26/25 36/1 39/10 65/12 66/1
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<b>A</b> <b>actually</b> [1] 70/17 <b>add</b> [1] 27/12 <b>added</b> [2] 18/1 52/23 <b>adding</b> [2] 18/21 58/8 <b>addition</b> [1] 28/10 <b>additional</b> [7] 4/20 18/10 25/18 25/20 26/4 26/5 64/2 <b>address</b> [3] 46/22 77/5 77/11 <b>addresses</b> [2] 49/12 52/2 <b>administer</b> [1] 73/15 <b>administration</b> [2] 15/12 52/5 <b>administration's</b> [1] 52/3 <b>administrators'</b> [1] 26/10 <b>admission</b> [1] 9/16 <b>admit</b> [1] 24/5 <b>admitted</b> [1] 40/5 <b>adult</b> [1] 15/7 <b>advice</b> [2] 24/5 24/6 <b>advise</b> [1] 76/11 <b>advocacy</b> [1] 73/7 <b>affect</b> [4] 8/5 8/8 16/22 17/10 <b>affirm</b> [1] 18/2 <b>afforded</b> [1] 52/6 <b>afraid</b> [7] 62/12 62/12 69/15 69/16 69/17 69/18 69/21 <b>after</b> [17] 6/12 8/14 32/10 38/22 39/10 40/6 40/8 41/10 42/11 47/10 56/19 57/2 63/17 66/5 72/19 72/21 73/9 <b>afternoons</b> [1] 14/10 <b>afterwards</b> [1] 67/19 <b>again</b> [18] 3/15 4/20 5/13 15/2 17/15 17/17 18/25 19/7 29/1 32/11 38/3 38/5 41/17 43/11 53/12 59/14 61/20 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